IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

WP(C).No. 28991 of 2006(B)

PETITIONER:

T.U.ANNAKKUTTY,
RTD. SENIOR ASSISTANT, LOWER PERIYAR HYDRO ELECTRICAL CIRCLE, VAZHATHOPP, RESIDING AT PULIYANMAKKAL HOUSE, VAZHATHOPP COLONY P.O., IDUKKI.

BY ADV. SRI.P.V.JAYACHANDRAN

RESPONDENTS:

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1. CHIEF ENGINEER,
HUMAN RESOURCES MANAGEMENT,
KERALA STATE ELECTRICITY BOARD,
THIRUVANANTHAPURAM.

2. THE EXECUTIVE ENGINEER,
OFFICE OF THE DEPUTY CHIEF ENGINEER (C),
LOWER PERIYAR CIRCLE, IDUKKI COLONY,
P.O.VAZHATHOPP.

3. THE ACCOUNTS OFFICER (PENSION SANCTION),
OFFICE OF THE CHIEF ENGINEER, HRM,
VYDHYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

BY SC SRI.K.S.ANIL KSEB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 28991 of 2006

Dated this the 1st day of December, 2006

JUDGMENT

The petitioner retired from the service of the respondent Board while working as Senior Assistant. Disciplinary proceedings were initiated against her which ended in the imposition of the penalty of withholding of increment for a period of six months without cumulative effect vide order passed on 6.6.2000. The petitioner filed statutory appeal against the order of penalty but failed to get favourable orders. Neither the order of the disciplinary authority imposing penalty nor the order dismissing the appeal by the Chairman is under challenge. Those orders have become final. That being the position, the petitioner will have to suffer the penalty. Naturally, she cannot be granted the benefit of increment due from 1.8.2000 for the next six months period which ended on 31st January 2001. It so happened that the petitioner retired on superannuation on 31.1.2001. Hence, there was no occasion for the petitioner to claim the next increment or increase in pay. However, as per Ext.P4 order dated 15.3.2005, the following communication among other was sent: **"As the punishment imposed is withholding of increment without cumulative effect for six months, her pay will be revised to the original after six**

months. Since, she retired on 31.1.2001, her pay can be fixed notionally by adding the withhold increment as on 1.8.2000, so that her pensionary benefits can be revised, accordingly.

Necessary entries regarding this may be noted in the service book and the revised last pay certificate as per the notionally fixed pay may also be forwarded duly countersigned, dated and affixed with office seal".

2. However, by Ext.P5 order, Ext.P4 stands modified stating that the last month's pay excludes last increment from 1.8.2000 to 31.1.2001, as the employee had retired from service before the accrual of the next increment. Ext.P5 is categoric that there is no scope for taking that increment into account on notional basis or to revise pensionary benefits by recalculating the average emoluments already worked out.

3. Ext.P5 is under challenge.

4. Learned counsel for the petitioner submits that the stand taken in Ext.P4 shall be sustained and Ext.P5 has to be set aside.

5. I am unable to accept the above contention. During the last six months preceding his retirement, the petitioner was prevented from enjoying the benefit of the increment which was otherwise due from 1.8.2000, and therefore, the petitioner continued to receive

basic pay at the same rate as she was getting prior to 1.8.2000. This state of affairs was liable to continue until 31.1.2001 and therefore, the question of further increase in pay could not arise unless and until the petitioner is found eligible to continue in service beyond 31.1.2001. That did not and cannot happen. Average emoluments were calculated taking into account and giving effect to the penalty imposed. Hence, the calculation of the average emoluments does not suffer from any error. If increment is notionally added, as stated in Ext.P4, that will amount to wiping of the effect of the penalty imposed by the authority. Such a consequence would go against the object and purpose of inflicting a penalty in the nature of withholding of increment. Therefore, the stand taken by the respondents in Ext.P5 is correct.

Writ Petition fails. Dismissed.

K.K.DENESAN, JUDGE

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